



COURT FILE NUMBER	1203 14727
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF(S)	MATTHEW HARRISON, as REPRESENTATIVE PLAINTIFF
DEFENDANT(S)	XL FOODS INC.
DOCUMENT	STATEMENT OF CLAIM

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A Class Proceeding pursuant to the  
*Class Proceedings Act*, Chapter C-16.5

**NOTICE TO DEFENDANT(S)**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

**A. LITIGANTS**

1. The Representative Plaintiff, Matthew Harrison resides in the City of Edmonton in the Province of Alberta.
2. The Defendant XL FOODS INC. ("XL") is a beef processor. XL has operations in Alberta and Nebraska. Products are sold through supermarkets, food service distributors and other retail and wholesale outlets. XL FOODS INC. is a corporation incorporated under the laws of Alberta. Its registered office is in Edmonton, Alberta.
3. At all material times, the Defendant processed, stored and packaged a variety of beef products for profit in the Province of Alberta and elsewhere in Canada and the United States.

**B. BACKGROUND**

4. This class action concerns the Defendant's negligent quality control, monitoring, processing, storage, distribution and sale of certain beef products.
5. The Plaintiff purchased steaks in Alberta that had been processed, packaged and stored by the Defendant (the "Beef")
6. On or about September 5, 2012 the Plaintiff consumed some of the above Beef.
7. After consuming the Beef the Plaintiff became extremely ill with E. coli (the "Illness"). The Plaintiff had symptoms including severe abdominal cramping,

vomiting, headache, fever, and diarrhea and was hospitalized for testing and treatment.

8. On September 4, 2012, E.coli was detected at the XL plant in Brooks Alberta (the "Brooks Plant").
9. On September 16, 2012, the Canadian Food Inspection Agency recalled some beef products produced by the Defendant (the "Recalled Products" and "the Recall"). The Recall was extended to more products in the weeks following the first Recall.
10. On September 28, 2012 the Canadian Food Inspection Agency temporarily shut down the Brooks Plant.
11. As late as Wednesday, September 26, 2012, XL claimed that there was no definitive link between its beef and illnesses reported in Alberta.
12. The Plaintiff's cause of the Illness was related E.coli infection. The Plaintiff has suffered physical illness, mental distress, emotional trauma and fear for his health as a result of his Illness and as a result of the Recall.
13. As a result of the events described above, the Plaintiff incurred expenses, particulars of which will be provided to XL prior to the trial of this matter.
14. The Plaintiff brings this action on his own behalf and on behalf of all persons resident in Alberta and Canada who purchased and/or consumed the Recalled Products (collectively the "Class").

**C. CAUSE OF ACTION**

**Strict Liability**

15. XL is strictly liable for some or all of the damages suffered by the Plaintiff and the other Class Members in that:

- a. XL manufactured the Recalled Products; and
- b. Food products are considered to be inherently dangerous products because they enter the body upon consumption and there is no opportunity for the Plaintiff or the other Class Members to inspect the food for contamination.

### **Breach of the Fair Trading Act**

- 16. Each of the Plaintiff and the other Class members is a “consumer” within the meaning of Section 1(1) of the Fair Trading Act, R.S.A. 2000, c. F-2 (the “FTA”).
- 17. Each of the purchases by the Plaintiff or the other Class members of Recalled Products is a “consumer transaction” within the meaning of Section 1(1) of the FTA. These consumer transactions took place in Alberta.
- 18. XL is a “supplier” within the meaning of s. 1(1) of the FTA to the consumer transactions for the purchase by the Plaintiff or the other Class members of Recalled Products.
- 19. By placing its brands, names, logos and trademarks on the Recalled Products and by placing those products in the stream of commerce, XL represented that the Recalled Products were of high quality, safe for consumption, and manufactured and packaged with adherence to the strictest of food safety standards (collectively, the “Representations”).
- 20. In making the Representations, XL breached Section 6(4)a of the FTA which deems it an “unfair practice” to (a) for a supplier to do or say anything that might reasonably deceive or mislead a consumer. XL’s Representations mislead consumers regarding the Recalled Products as those products were not of high

quality, safe for consumption, or manufactured and packaged with adherence to the strictest of food safety standards.

21. The Plaintiffs and Class members who purchased and/or consumed Recalled Products claim the full purchase price of those goods and damages, pursuant to s. 7(3) of the FTA.

### **Negligence**

22. Alternatively, in the event that the Court finds that XL is not strictly liable for the contamination of its products, specifically the Recalled Products, XL is liable to the Plaintiff and the other Class members in negligence.
23. At all material times the Defendant owed a duty of care to the Plaintiff and other class members to ensure that its Beef products were safe for consumption and that ingestion of those products would not cause illness or injury.
24. The Plaintiff and the other class members plead that the Defendant breached its duty and the standard of conduct expected of them in the circumstances.
25. The Plaintiff and the other class members state that the Defendant breached its duty by failing to ensure that its Beef products were safe for consumption. The Plaintiff and the other class members' damages were caused by the negligence of the Defendant. Such negligence includes, but is not limited to:
- a. Failing to test their Beef products thoroughly prior to marketing and distribution to ensure they were safe for consumption;
  - b. Failing to implement, ensure and follow quality control and assurance processes in the processing, storage and distribution of their Beef products;
  - c. Failing to recall all of its tainted Beef immediately upon learning that people were becoming ill after ingesting them;

- d. Failing to adopt technological advances in laboratory testing of beef products and advances in equipment;
  - e. Failing to devote sufficient financial resources to staffing personnel with expertise in food safety;
  - f. Failing to implement adequate procedures for the cleaning of equipment in order to prevent the contamination of food products, or, in the alternative, failed to ensure such procedures were followed;
  - g. Failing to implement adequate procedures to ensure that outside contaminants were not brought into the plant where food was manufactured and/or processed, or, in the alternative, failed to ensure such procedures were followed;
  - h. Failing to employ and properly train competent staff on proper, safe or adequate food handling techniques; and
  - i. Such further and other particulars of negligence that may be proven at the trial of this action.
26. Despite having knowledge of the poor quality control with their Brooks Plant, the Defendant concealed this information from the consumers, the general public and regulatory authorities:
- a. To maintain revenue;
  - b. To increase or maintain profit;
  - c. To increase or maintain market share;
  - d. To avoid negative publicity;
  - e. To place corporate revenue and profit above the safety and lives of the of the Plaintiff and the other Class members;
  - f. To avoid the costs associated with correcting the defects in quality control; and
  - g. Such further and other reasons that may be proven at the trial of this action.

**Waiver of Tort/Disgorgement**

27. XL was enriched as a result of its breaches of duties owed to the plaintiff and the other Class members. XL received revenues and earned profits on the Recalled Products that were sold and distributed to various stores, restaurants and institutions. While XL has retrieved a portion of the Recalled Products and reimbursed certain large stores, restaurants and institutions for unsold products, the majority of Recalled Products have not been retrieved. XL has not reimbursed the Plaintiff or the other Class members for the Recalled Products.
28. The Plaintiff and the other Class members reserve the right to elect at the trial of the common issues to waive the tort of negligence and to have damages assessed in an amount equal to the gross revenues earned by XL, or the net income received by XL from the sale of the Recalled Products.

**Vicarious Liability**

29. The Plaintiff pleads that XL can only act through its employees, directors, officers and agents and is vicariously liable for their acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this claim to have been done by XL were authorized, ordered or done by XL's employees, directors, officers and agents while engaging in the management, direction, control and transaction of XL's business and are therefore acts and omissions for which XL is vicariously liable

**D. PUNITIVE DAMAGES**

30. The Plaintiff and the other class members plead that the Defendant's conduct in terms of quality control, monitoring, processing, storage, distribution and sale of certain beef products was without care and in disregard of the health of the Plaintiff and the other class members, and motivated by economic considerations

such as the maintaining of revenue and market share. Such conduct renders the Defendant liable to pay punitive damages.

**E. DAMAGES**

31. The Plaintiff and the other class members plead that they would not have purchased or consumed the defective Beef products had they known of the defective nature of the quality control, monitoring, processing, storage, distribution and sale of the said Beef products.
32. As a result of the negligence of the Defendant, the Plaintiff and other class members have suffered the following damages:
  - a. Illness and injury;
  - b. Emotional and psychological trauma as a result of the illness or injury;
  - c. Other out-of-pocket expenses incurred by the Plaintiff and the other class members;
  - d. Loss of income; and
  - e. Such further and other damages that may be proven at the trial of this action.

**Non-Pecuniary General Damages**

33. The Plaintiff and the other Class members experienced physical injury as a result of consuming Recalled Products, including symptoms of abdominal cramping, vomiting, headache, fever, and diarrhea.
34. The Plaintiff and other Class members suffered psychological injuries as a consequence of their physical injuries. The Plaintiff and other Class members suffered psychological injuries as a result of fearing for their health and their lives, as well as fearing for the health and lives of family members who also



consumed Recalled Products. They have lost and will continue to lose enjoyment of life.

35. The Plaintiff and other Class Members will continue to suffer psychological injury and emotional upset flowing from the consumption of Recalled Products for the foreseeable future.

### **Pecuniary Damages**

36. The Plaintiff and other Class members have suffered pecuniary damages due to illness and the threat of illness.
37. They have incurred hospital, medical, nursing, medication and other out-of pocket expenses and will incur future care costs. They have lost income and will continue to lose income in the future.
38. XL is liable to pay damages to the Plaintiff and to the other Class members including, but not limited to, damages on account of out-of-pocket expenses associated with buying the products on the Recall List and such further and other particulars as may be provided prior to the trial of the common issues.

### **Disgorgement of Revenues**

39. The Plaintiff and the other Class members claim in the alternative a disgorgement of all revenues or alternatively profits earned by XL from the sale of Recalled Products.
40. The trial of this action will likely take more than twenty-five days to complete.
41. The Plaintiff and the other class members propose that this action be tried in the City of Edmonton in the Province of Alberta.

42. Each Plaintiff therefore claims against the Defendant:

- a) a declaration that the Recalled Products are contaminated;
- b) a declaration that XL is strictly liable to the Plaintiff and the other Class Members for the damages caused by the Recalled Products;
- c) alternatively, a declaration that XL was negligent in the manufacturing, processing and packaging of the Recalled Products;
- d) a declaration that the sale of the Recalled Products when they were contaminated, or alternatively, potentially contaminated with E.coli is an unfair practice and as such contravenes Sections 6(4)(a) of the FTA, and an award of damages to the Plaintiff and to the other Class members pursuant to Section 7(3) of the FTA;
- e) general or non-pecuniary damages;
- f) special damages in an amount to be proven at trial;
- g) further or alternatively, an accounting of the gross revenue or net income resulting from the sale of the Recalled Products and an Order requiring XL to disgorge the amount determined on the accounting;
- h) damages for injury and/or illness;
- i) punitive damages;
- j) loss of income;
- k) interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J 1 as may be allowed;
- l) costs of this action on a solicitor/client basis; and
- m) such further and other relief as this Honourable Court may allow or counsel may advise.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiffs' address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiffs against you.